

*Corp. Tax Determinations*  
*A-Z*  
*BXP Construction Corp.*  
STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BOARD OF CONFEREES - CORPORATION TAX BUREAU

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In the Matter of the Application :  
of :  
BXP CONSTRUCTION CORP. : Hearing Case No. 3348  
for revision of franchise tax under :  
Article 9A of the Tax Law for the :  
calendar year 1962. :

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The taxpayer and its subsidiary, Bronx Park East Housing Company, Inc., computed and paid a tax of \$4,394.38 on a combined basis on combined capital of \$4,394,384.39, at the rate of one mill.

On audit we computed the following tax:

Combined Net Income	\$190,912.09
Tax at 5½%	\$ 10,500.16

The main item disallowed was intercompany profits of \$229,852.35.

The recomputed tax was billed on April 24, 1964 and application for revision or refund was filed on June 29, 1964.

The taxpayer is a wholly-owned subsidiary of Consolidated Mortgage & Investment Corporation, a Delaware corporation. The taxpayer, in turn, wholly owns Bronx Park East Housing Company. These three corporations filed a Federal consolidated report.

For the calendar year 1962 the taxpayer and its subsidiary were permitted to file on a combined basis.

Bronx Park East Housing Company is a limited profit housing company.

The taxpayer was the contractor which constructed the building and all of its income for 1962 was derived from its contract with Bronx Park East.

The intercompany profits of \$229,852.35 is represented entirely by debenture bonds of Bronx Park East, payable in the year 2004, the interest on which is payable only out of "available net earnings" which is basically net income subject to numerous further restrictions. Therefore, if the intercompany transaction is to be taxed, the amount accrued, being uncertain in amount, must either be reduced to reflect its fair market value or a bad debt reserve must be established.

We believe that no value can be placed on the restricted debenture bonds maturing in 2004 until they are redeemed or transferred for value. If the taxpayer had reported on an individual basis for Federal purposes,

Approved  
IRA J. PALESTIN  
1/19/66

it could have treated this item in a similar manner.

Under the provisions of Section 208.9 of Article 9A and Section 3.14 of the Ruling of State Tax Commission, the Tax Commission may, wherever necessary in order properly to reflect the entire net income of any taxpayer, determine the year or period in which any items of income or deduction shall be included. This Board believes it is necessary to exclude the debenture bonds in this matter to properly reflect entire net income as has been done in similar cases, including CWC Construction Corp., which was approved by the Tax Commission.

We recommend that the tax be corrected as follows:

Business Capital	\$4,982,572.24
Tax at 1 Mill	4,982.57
Original Tax	10,500.16
Reduction	\$ 5,517.59

/s/

W. F. SULLIVAN

Chairman

Approved  
E. A. DORAN

/s/

D. H. GILHOOLY

I agree

/s/

J. J. GENEVICH

JAMES R. MACDUFF  
1-5-66

WFS:MB

December 22, 1965